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THE LITTLE-KNOWN LAW THAT THE TRUMP ADMINISTRATION IS USING TO BUILD A BORDER WALL

Under the Real ID Act, Secretary of Homeland Security Kirstjen Nielsen has the power to bypass environmental safeguards, rendering any ecological downside to a border wall a moot point.

JIMMY TOBIAS · JAN 21, 2019

Earlier this month, Representative [Raúl Grijalva](#), the incoming chairman of the House Natural Resources Committee, held a public forum dedicated to the human and environmental ramifications of President [Donald Trump](#)'s proposed [border wall](#). It was a sobering affair. Speaker after speaker described the devastating toll that the [existing 650 miles of border barriers](#) have already had on the [people, animals, and landscapes](#) adjacent to the United States–Mexico border. An expanded wall, they said, would be even worse: eradicating animal habitat, confiscating private property, and blocking access to public lands.

Toward the end of the forum, Verlon Jose, the vice chairman of the Tohono O'odham Nation, directed the crowd's attention to another hugely troubling, if little-discussed, consequence of border wall construction. "No other group of Americans has been stripped of federal protections in [the way we have]", said Jose, whose people have lived along the Arizona and Mexico border for generations. "Why should Americans living in our border communities not be entitled to the same federal protections that other Americans enjoy?"

A group of Americans singled out and stripped of federal protections? It was a disturbing allegation, and it's all too true.

Jose was referring to a powerful but little-known law that is the scourge of some borderland residents: the [Real ID Act](#), which has effectively turned parts of the U.S.–Mexico border into a region without civil and environmental rights.

The Real ID Act was passed in 2005, at the height of the [War on Terror](#), when President [George W. Bush](#) was in the White House and Republicans controlled Congress. The law received bipartisan support; [Nancy Pelosi](#), [Joe Biden](#), [Hillary Clinton](#), and [Barack Obama](#) all voted for it.

The Real ID Act, which amended previous immigration statutes, grants vast and arbitrary powers to the [Department of Homeland Security](#). The government contends it gives the DHS secretary total discretion in waiving any U.S. laws that stand in the way of wall and barrier construction along the southern border. In effect, that means DHS can sidestep any legal protection guaranteed to the American people—including the [Endangered Species Act](#), the [Clean Air Act](#), the [Native American Graves Protection and Repatriation Act](#), and the [Safe Drinking Water Act](#)—so long as doing so expedites the construction of fences, [concrete slabs](#), or similar security state infrastructure at the border.

Real ID Act waivers have only been used a handful of times since 2005, but the Trump administration has now latched onto them as it seeks to build hundreds of miles of new wall along the southern border. It has used such waivers in five instances since taking office.

On January 22nd, 2018, for instance, Secretary of Homeland Security Kirstjen Nielsen waived approximately 20 laws, including the Endangered Species Act, the National Environmental Policy Act, the American Indian Religious Freedom Act, and the Antiquities Act, in order to build new border barriers in southeastern New Mexico.

On October 10th, 2018, Nielsen invoked the Real ID Act again to waive roughly 25 laws and build gates and new physical barriers in Texas' Cameron County in the Rio Grande Valley.

A day later, on October 11th, Nielsen, wielding the Real ID Act, bypassed another slew of laws to build 18 miles of 30-foot-high walls in Texas' Hidalgo County, also in the Rio Grande Valley.

These Real ID waivers have posed nearly insurmountable obstacles to immigrants rights groups, conservationists, civil libertarians, tribal nations, and others who seek to block the DHS from constructing barriers along the border.

"The walls as they stand today could not have been built without the use of such waivers," says Brian Segee, a senior attorney at the Center for Biological Diversity, an environmental group that has sued the Trump administration over its use of Real ID Act waivers. "I think a lot of the harm that has been inflicted by the border walls couldn't have happened otherwise."

Indeed, scientists say these walls are a disaster in the making. In a commentary published last July in the journal BioScience, thousands of prominent scientists, including luminaries like Paul Ehrlich, E.O. Wilson, and Michael Soulé, decried the impact of border wall construction on plant and animal habitat in the American Southwest:

[C]onstruction of the wall and associated infrastructure ... eliminates or degrades natural vegetation, kills animals directly or through habitat loss, fragments habitats, reduces habitat connectivity, erodes soils, changes fire regimes, and alters hydrological processes. Human activity, light, and noise associated with the wall further displace wildlife, making additional habitat unavailable.

Environmental impacts such as these—which pose grave threats to iconic and imperiled species like the jaguar and the ocelot—would normally be addressed through the implementation of the Endangered Species Act or the National Environmental Policy Act, two key laws that safeguard America's land and wildlife. But at the border, when it comes to wall construction, these laws simply no longer exist.

Civil rights advocates are enraged as well, viewing the Real ID Act waivers as a dire threat to equal protection under the law.

"Those waivers have been devastating to south Texas," says Efrén Olivares, the director of the racial and economic justice program at the Texas Civil Rights Project, a legal advocacy non-profit. "The idea that the secretary of [the] DHS could come to your community and say no laws apply here, what kind of rule of law is that? People should be outraged to know that Homeland Security can wield that kind of power."

